

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Agriculture Department – Appeal filed by M/s. Gangothri Nutrients & Fertilizers Pvt Ltd , Tarnaka, Secunderabad to the appellate authority – Appeal disposed of – Orders – Issued.

AGRICULTURE AND COOPERATION (AGRI.V) DEPARTMENT

G.O.Rt.No. 945

Dated: 23-08-2012

Read the following:-

1. Appeal filed by M/s. Gangothri Nutrients & Fertilizers Pvt Ltd , Tarnaka, Secunderabad to the appellate Authority, dated: 20.4.2012.
2. From the C&DA,AP.,Hyd Lr.No. Fert.II(1)442/2012, dated: 12.6.2012.
3. Orders of High Court of Andhra Pradesh, dated: 9.7.2012 in WP No. 20553 of 2012.

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ORDER :-

M/s Gangothri Nutrients & Fertilizers Pvt Ltd. represented by its Managing Director, Sri K. Madhura Reddy, filed an appeal dated: 20.4.2012 received in the office of Appellate Authority and Principal Secretary, Agriculture on 20.4.2012 seeking to set aside/quash the orders of the Appellate Authority, respondent Commissioner and Director of Agriculture in the Procds. No. Fert./II (1) 442/2012, dt. 28.3.2012.

2. The appellant stated that he after studying various publications of Central/State Governments and after covering requisite information and material from different sources including the present and future demand in respect of granulated NPK mixture fertilizers decided to establish a manufacturing unit as per the provisions of Fertilizers Control Order 1985. He also submitted that as a matter of abundant precaution even approached Commissioner and Director of Agriculture and the respondent in the month of October, 2010 and after all this, he set up the Unit by incurring nearly Rs.18 crores.

3. It is surprising that a diligent applicant such as this appellant did not come to know of the availability or otherwise of raw materials and the abundant availability of more preferred complex fertilizers in the market especially after the inception of the nutrient based subsidy policy of Government of India with effect from 1.4.2010. It is also worth noting that he failed to know the new policy of the State Govt. not to encourage any more mixed fertilizer units notified through Memo No.14251/Agri.V/A1/2010-2, dt. 9.11.2010 even though it was quashed by Hon'ble Andhra Pradesh High Court much later. In spite of all this, he like putting cart before the horse built the factory and then submitted application for registration on 27.3.2012.

4. The Commissioner and Director of Agriculture submitted para wise remarks on the grounds raised in the Appeal petition through his Letter No.742/2012, dt. 12.6.2012. The matter had to be examined with reference to the various rules and regulations notified by Govt. of India from time to time and the para wise remarks submitted by the Commissioner and Director of Agriculture. The complexity of the case and the pre occupation of the Appellate authority with day to day works pertaining to the supply of various inputs like seeds, fertilizers connected with the Kharif season caused a slight delay in passing of the final orders (in the context of the orders of Hon'ble AP High Court dated 9.7.2012 in the WP No.20553/2012).

5. Government of India has issued Fertilizer Control Order 1985 in exercise of the powers conferred by Section 3 of the Essential Commodities Act 1955 with a view to secure equitable distribution and availability of fertilizers at a fair price by regulating the production, supply and distribution of trade and commerce in the fertilizers.

6. The explanation of the Commissioner and Director of Agriculture and the respondent for rejection of the application for registration by the appellant was stated to be as per the Clause 15 of Fertilizer (Control) Order 1985. Considering that the main purpose of the FCO 1985 is to make equitable distribution of the fertilizers, the orders passed by the respondent are appearing to be legal and as per the purpose and the intention of the Fertiliser (control) order. It is understood that the Essential Commodities Act has been enacted with a view to protect public interest by making essential commodities available to the needy people and it outweighs the interests and rights of individuals who are motivated only by their profits.

7. The contention of the appellant in the ground no.2, that the sale should not exceed the maximum price fixed by the Govt. or as per the law laid down under Clause 3 of Fertilizer (Control) Order 1985 is not only untrue but also militates against other grounds raised by the applicant elsewhere as in Sl.No.7, 8 and 11, wherein the appellant while quoting the orders of Government of India in File No.1-8/92, FERP.LAW, dt. 25.8.1992 and also as per the scheduled Notification Nos. SO 526/2, dt. 14.8.1991 and SO 125/E, dt. 10.2.1992, shows that the Govt. have decontrolled the fertilisers in the year 1992 and the Government has not fixed any price for the fertilizers. No doubt, the appellant has really done very deep research and is quoting different orders at different times as per their suitability and convenience. However, it is a fact that according to the latest policy of the Govt. of India, the price of the fertilizers excepting urea are decontrolled and the manufacturers can fix the price at their choice. Nevertheless, the Government of India expects the manufacturers sourcing the subsidy from Government (All the manufacturers do), to adhere to the inter state distribution notified by Government of India, the inter district distribution within the state as per the orders of the Commissioner and Director of Agriculture (C&DA) and ultimately the dealer wise distribution in a district as per the orders of the concerned Joint Director of Agriculture.

8. It is true according to the policy, the manufacturers/importers (suppliers) could produce or import fertilizers without the involvement of Government of India subsidy and in such a case they are at the liberty to do what they like with such fertilizers. Unfortunately, the appellant never brought this clarity before any authority. Especially the fact that Government of India extends huge subsidy amounting up to Rs.25-40 per KG of nutrients and in such a circumstance it becomes economically impossible for any serious player such as the appellant to deal in totally uncontrolled fertilizers without any subsidy. This is the basic truth based on which the respondent held that there is no such a thing as the manufacturer's free quota to be purchased from any part of India. It is true that the Govt. of India instructions permit the Mixed Fertilizer Units to draw the subsidized fertilizers directly from the manufacturers but only after the fertilizer reaching the district of allotment and as per construction, under the legitimate distribution orders of the C&DA or his sub-ordinates. The Commissioner and Director of Agriculture is making it abundantly clear that it is just not possible to allocate fertilizers to them in present circumstances.

9. At this stage, the contentions of the respondent and the Commissioner and Director of Agriculture that the physical availability of fertilizers is inadequate when compared to the primary demand of the farmers, that the mixed fertilizer units do not add any value as they simply mix different fertilizers and market the resultant mixture as being the grounds for the rejection of the application of the appellant deserves a close consideration. Govt. of India considering that most of the fertilizers are either imported or based on imported raw materials, scarce in nature and some times difficult to obtain; rations their allocation amongst the states by investing huge sums of money as subsidy ranging up to Rs.80,000 crores per annum. This is being done as fertilizers are a critical input required for food production which in turn is essential for the food security of the country. These rationed allocations are much lesser than what farmers would like to have which can be easily understood if one sees the long lines of the farmers in front of the shops of the dealers. The following table also depicts that even such rationed allocations are not kept up for various economic, strategic or logistic reasons

for State of Andhra Pradesh : (Fertilisers quantity in lakh MT)

Sl.No.	Year	Allocation	Supply	Deficit (in %)
1	2008-2009	44.50	41.21	3.29
2	2009-2010	48.50	40.24	8.26
3	2010-2011	49.00	46.25	2.75
4	2011-2012	55.75	43.99	11.76

10. Thus, even when the rationed allocations are not kept up there is the historical load of 20 existing Mixture Fertiliser Units registered in the State having a capacity of about 14 Lakh MTs of fertilizers which would amount to about 17% of the average annual fertilizer allocation of the State. It is besides the point that these existing units are themselves running only at about 25% of the capacity mostly because of inadequate raw materials supply.

11. Similarly the grounds raised at Sl.No.13 & 14 again exhibit the crafty and opportunistic use of different circumstances and notifications by the appellant, who while claiming they never called upon the Government to supply subsidised raw materials, goes on to show in his grounds mentioned at Sl.No.14 that the orders issued by the respondent in FERT 11(3)/1719/2008, dt.7.8.2008 directing that NPK granulated mixture units in the State shall procure the raw materials only with his permission has been struck down by Andhra Pradesh High Court in WP No.24537/2010, dt.28.10.2010 and later reiterated by the same Hon'ble Court in the appeal filed by the respondent. Thus it betrays the appellants real intention which is nothing but to use the various loopholes in the multiplicity of the orders and instructions to draw the subsidized fertilizers for their profits only, against the public interest by obtaining the registration under FCO 1985.

12. Thus the contention of the appellant that he can obtain the raw material in the open market is only specious plea deployed to persuade the authorities to yield to his desire, but not with any honest intention to be bound by it. Further it also would be an economically unsustainable proposition to manufacture and sell mixtures made from unsubsidized/unregulated raw materials, as such fertilizers would be at least twice more costlier than their counterpart fertilizers sold with government subsidy. Thus the main intention of the appellant is to obtain registration under the guise of orders and notifications quoted out of context and by misrepresentations ultimately to draw the subsidised fertilizers which would have a natural consequences of not only law & order problem all over the state but also endangering the food security of the country. Thus the orders of the Respondent are found to be bonafide, well thought-out, practical and in the interests of securing equitable distribution and availability of fertilizers to the farmers in time and National Food Security and ultimately as per the objectives and intentions of the Fertiliser (Control) Order 1985 and Essential Commodity Act 1955. Hence, the appeal filed by M/s Gangothri Nutrients & Fertilisers Pvt. Ltd., Nalgonda Dist. is rejected as being without any grounds or merits.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

V. NAGI REDDY,
PRINCIPAL SECRETARY TO GOVERNMENT &
APPELLATE AUTHORITY..

To:

The Managing Director, M/s. Gangothri Nutrients & Fertilizers Pvt. Ltd.,
H.No.12-5-35/A/9,T-9, Third Floor, Ballad Estate, Tarnaka,
Secunderabad-17

Copy to :

The Commissioner and Director of Agriculture, A.P., Hyderabad.
Sf/sc.

// FORWARDED :: BY ORDER //

SECTION OFFICER.